IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 742 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JALALUDIN JABBAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 742 of 1997

MR US BRAHMBHATT for Petitioner

MR HL JANI, APP for Respondent - State

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE H.H.MEHTA

Date of decision: 07/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.H.MEHTA)

1. The appellant, who was the original accused in Sessions Case No.227 of 1996 before the Court No.10 of

Additional Sessions Judge, City Civil Court, Ahmedabad has, by preferring this Criminal Appeal under Section 374(2) of the Criminal Procedure Code, 1973 [for short "Cr.P.C."] read with Section 36-B of the Narcotic Drugs and Psychotropic Substances Act, 1985 [for short N.D.P.S. Act] challenged the correctness, legality and validity of judgment Ex.28 rendered by the Additional Sessions Judge, Court No.10, City Civil Court, Ahmedabad [who will be referred to hereinafter as the "learned Judge of the trial Court"] in Sessions Case No.227 of 1996 on 20.05.1997, whereby the appellant has been convicted under Section 235(2) of the Cr.P.C. for an offence punishable under Section 22 of the N.D.P.S. Act for contravention of Section 8 of the N.D.P.S. Act and sentenced to undergo R.I. for 10 years and to pay a fine of Rs.1,00,000-00 [Rupees One Lac Only] and in default to undergo further R.I. for six months.

2. The facts leading to this present appeal in a nutshell are as follows :-

2.1 As per the complaint, Ex.17 filed by P.W.6 Surendrasinh Gambhirsinh Gohil, Police Inspector of Crime Branch, Ahmedabad City, he was on duty in D.C.B. Office at 9.30 A.M., on 14.06.1996. While, he was on duty at about 12.45 hours, he received one information from P.W.4 - Vakhatsinh Devisinh Vanar, P.S.I. of Crime Branch to the effect that one person by name Jalaludin Jabbar Jat [present appellant] resident of huts of Chandola Talav, Near Millatnagar, Ahmedabad, who has worn white full sleeve shirt and black pantaloon, aged about 25 to 30 years is keeping with him contraband article "Charas", is likely to pass nearby Jamalpur Circle at about 12.30 P.M. from the side of Geeta Mandir, S.T.Stand with an intention to sell that article. On receipt of such information, the complainant Shri Gohil made an Entry No.10/96 [Ex.19] at about 12.45 hours in the Station Diary of D.C.B. Police Station. A report [Ex.22] with regard to such an information received by him was sent to Deputy Police Commissioner, Crime Branch, Ahmedabad City.

2.2 Thereafter, Shri Gohil called P.S.I. Shri V.D. Vanar, First Grade Head Constable Shri Motibhai Khushaldas, Head Constable Batukbha Kalubha, Police Constable Narendrasinh Chandrasinh and other police personnel in his chamber and informed them about the information received by him from P.S.I. Shri V.D.Vanar. He also informed them that they had to accompany him, at the time of intercepting appellant at the place of which information was received by him for the purpose of raid and search. Thereafter, Shri Gohil called two

independent persons to act as panch witnesses in his office. He, thereafter, gave introduction of the police personnel, who had assembled in his office to that two persons, who were called to act as panch witnesses. That two persons shown their willingness to act as panch witnesses. Thereafter, a preliminary panchnama was drawn in his office during the period from 13.15 hours to 13.35 hours.

2.3 Thereafter, complainant Shri Gohil, in company of P.S.I. Shri V.D. Vanar and other police personnel and two panch witnesses, left his office for Jamalpur Circle, near Fire-brigade Station by vehicles. They all got down from the vehicles and as per the instruction given by Shri Gohil, all the police personnel and panch witnesses took their respective positions nearby Jamalpur Circle in such a way that no one can notice their presence. It is the case of the prosecution that about 13.45 hours, P.S.I. Shri Vanar informed panch witnesses, who had taken their positions in the corner of Jamalpur Fire-brigade Station and the complainant, that person resembling person whose description was received in information was seen coming on the road leading from the side of Geeta Mandir, S.T. Stand. They saw that person was having one sky coloured cotton hand bag in his right hand. On seeing that person coming from the side of Geeta Mandir S.T. Stand, the panch witnesses, complainant, Shri Vanar and other police personnel started to walk on the road, as if they were bypassers towards that person. When they covered a distance of 100 paces from Fire-brigade corner, they met that person under the tamarind tree. That person was intercepted by them. Meanwhile he doubted for the persons, who intercepted him and, therefore, he tried to run away from the place, but he could not succeed.

2.4 After making him to halt the complainant in presence of panch witnesses asked his name. He informed that he was Jalaludin Jabbar Jat resident of huts of Chandola Talav, Near Millatnagar, Ahmedabad and that he was aged about 27 years. The complainant noticed that he had worn a full sleeve white shirt and black pantaloon. That person was nobody else, but the present appellant. The complainant in presence of panch witnesses informed him about the information with regard to him, received by him and that he was having with him some intoxicant contraband article. He was informed by the complainant that he was at liberty to take search of the complainant, panch witnesses and other police personnel, who intercepted him. He declined to take search of members of the raiding party. Thereafter, the complainant gave

his introduction by showing his identity card to the appellant. He also informed the appellant about police personnel and panch witnesses present with him and asked him as to whether he had any doubt with regard to action which they propose to take in accordance with law. He was also informed that he was at liberty to get him searched in presence of either Gazetted Officer or Executive Magistrate. The accused denied to get him searched as informed of by the complainant. He also expressed his views that he has faith in police proceedings.

2.5 Thereafter, the complainant in presence of panch witnesses searched the "person" of the appellant, but nothing was found from his "person or clothes worn by him. During the course of such search, which was going on, the complainant found that the appellant was having one cotton hand bag in his right hand. On getting searched that hand bag in presence of panch witnesses by the complainant, it was found that there was one transparent plastic bag tied with wax string and that bag was filled with some black coloured pieces of some substance. That transparent plastic bag was, by removing that wax string, opened and it was found that there were some slabs of square size, rectangle size, oval shape and egg-shape solid substance were found. Out of them some pieces were broken. There was some powder of substance in the transparent plastic bag. Pieces were counted. They were 25 in number. That pieces of substance were smelt by panch witnesses and the complainant and it was found that smell of "Charas" was emitting from that substance. As the appellant was found with the possession of such contraband article of "Charas", the complainant asked him as to whether he was having any pass, permit or license for keeping such substance with him. The appellant denied to have such pass, permit or license.

2.6 Thereafter, that substance was required to be weighed and, therefore, Goldsmith by name P.W.5 Bipinbhai Chandrakant Soni, Ex.15 was called with weighing scale and weight measurements. P.W.5 Bipinbhai Chandrakant Soni, Ex.15 came at the said place with weighing scale and weight measurements. That substance was weighed by him. It was found that the substance was weighing about 1135 grams. Meanwhile, one Scientific Officer of Forensic Science Laboratory [for short the "F.S.L."] was called to examine the substance on the spot. As per the case of the prosecution Shri A.R. Ranpura, Officer of F.S.L. came there and he examined that substance and he gave a preliminary opinion that the substance was

"Charas". He also asked the complainant to send the sample of that substance for detailed examination to the F.S.L. Thereafter, that substance, which was found from transparent plastic bag was kept, inside that bag in same condition and, that bag was tied with a wax-string. That plastic bag was then put in one cotton bag. That cotton bag was also tied with string and it was properly packed and sealed by putting a paper slip bearing signatures of panch witnesses and complainant Seal impression of "Police Inspector of D.C.B., Ahmedabad City" was put on that paper-slip. Thereafter, that cotton bag was placed inside one thick card board box meant for wheel shop. Thereafter, that box was duly packed and sealed. Thereafter, the complainant asked the appellant as to from which source he brought that contraband article and at what destination, it was to be sent. On making such query to appellant, he informed the complainant that he purchased that article from one Jalaludin Pathan residing at Chandola Talav Chhapra, Millatnagar, Near Mohammadi Maszid, Ahmedabad. He also informed that Jalaludin Pathan was originally resident of village Mahenia, Tal. Maharaj-Ganj, District Gorakhpur [Utter Pradesh]. It is to be noted that this person by name Jalaludin Pathan is shown as absconding accused in vertical column No.2 of charge-sheet filed against the present appellant. The appellant also informed the complainant that he had purchased that article from said Jalaludin Pathan for sale to other customers, who may be likely available at the place known as "Sapt Rhushina Aara". Thereafter, the complainant in presence of panch witnesses completed the panchnama at that very place during the period from 13.45 hours to 19.00 hours. It is mentioned in this panchnama that there was one electric light pole just at a distance of 16 paces from a tamarind tree. As per the complaint that article was estimated to be of value of Rs.28,375-00 [Rupees Twenty Eight Thousand Three Hundred Seventy five Only]. That article was recovered seized and sealed under panchnama from the appellant and for that a receipt was given to the appellant.

2.7 Immediately, thereafter, the complainant Shri Gohil, by taking with him that muddamal article and custody of the appellant, went to D.C.B. Police Station and lodged his complaint against the appellant and absconding accused Jalaludin Pathan in D.C.B. Police Station. That complaint came to be registered as C.R. No.Prohi-20/96 at about 20.05 hours on 14.6.1996 and entry with regard to such complaint being lodged by Shri Gohil was made in the Station Diary. That complaint came to be registered for the offences punishable under Sections 8, 20, 22, 23 and 29 of the N.D.P.S. Act. That

Crime of C.R.No.Prohi-290/96 was investigated by Shri Gohil and on completion of investigation, he filed a charge-sheet against the present appellant in the City Sessions Court, Ahmedabad on 12.9.1996. That charge-sheet came to be registered as Sessions Case No.227 of 1996. In that charge-sheet, the Investigating Officer has cited the name of Jalaludin alias Jamal son of Kamruddin Pathan as absconding co-accused.

3. The learned Judge of the trial Court has framed a charge [Ex.1] against the appellant for the offence punishable under Section 22 of the N.D.P.S. Act for contravention of Section 8 of the N.D.P.S. Act on 12.12.1996. On recording plea of the appellant, he pleaded not guilty to the charge and claimed to be tried. The prosecution has examined in all six witnesses to prove the guilt of the accused for the offence stated in the charge.

P.W.1 Shri Ashokbhai Dahyabhai Patel Ex.8
[panch witness]
P.W.2 Shri Gokalbhai Ramabhai Ex.10
[First Grade Police Jamadar]
P.W.3 Police Constable Shri Sagarbhai Ex.12
Haribhai Rabari
P.W.4 P.S.I. Shri Vakhatsinh Devsinh Ex.13
Vanar
P.W.5 Shri Bipinchandra Chandrakant Ex.15
[Goldsmith]
P.W.6 P.I. Shri Surendrasinh Gambhirsinh Ex.16
Gohil

4. The prosecution has also produced the following documents along with other documents in support of its case against the appellant.

1. Forwarding letter with which muddamal article was sent to F.S.L. Ex.5.
2. Report of F.S.L. Ex.7.
3. Panchnama Ex.9.
4. Muddamal Receipt Ex.11.
5. Information received by Shri Vanar, P.S.I, Ex.14;
6. Complaint Ex.17.
7. Report under Section 157 of the Cr.P.C. of complainant made to the Superintendent of Court No.10, City Sessions Court, Ahmedabad, Ex.18.
8. A copy of Entry No.10 [12.45 hours] dated 14.6.1996 from Station Diary of D.C.B. Police Station, with regard to information received by Shri Gohil from Shri Vanar, Ex.19.
9. A copy of Entry No.15 [20.05 hours] with regard

to report made under Section 157 of Cr.P.C., from the Station Diary of D.C.B. Police Station, Ex.20.

10. A copy of Entry No.16 [20.20 hours] with regard to Muddamal article handed over to P.S.O. of D.C.B. Police Station etc. from the Station Diary, Ex.20 [on second page].

11. Vardhi dictated by writer Head Constable Shri Natvarsinh Nathusinh Chavda at the instance of P.I. Shri S.G. Gohil, Ex.21.

12. Report with regard to information received by Shri Gohil, made to the Deputy Police Commissioner, Crime Branch, Ahmedabad City, Ex.22.

13. Yadi written to Director, F.S.L. by Shri Gohil requesting him to depute some Scientific Officer of F.S.L. at the place of raid for a preliminary examination for the substances, Ex.23.

14. A certificate dated 14.6.1996 given by F.S.L., who examined the substances at the place of raid, on back of Ex.23.

15. A receipt given by Shri Gohil to the accused for article recovered and seized from him Ex.24.

16. Information to appellant giving grounds of arrest in the form of report Ex.25.

5. After recording of evidence led by the prosecution was over, the circumstances appearing against the appellant were brought to the notice of and explained to the appellant. The appellant has denied practically the entire case of the prosecution. He has neither led any evidence in his defence nor examined himself as a witness in his defence. His further statement was recorded under Section 313 of the Cr.P.C. After hearing the arguments of the learned advocates for both the parties and after analyzing and making appreciation of evidence on record, the learned Judge of the trial Court came to be conclusion that on or about 14.6.1996 at about 19.00 hours, the present appellant was found with actual and conscious physical possession of the contraband article "Charas" weighing about 1135 grams on the public road just Near Jamalpur Circle, Fire-brigade, Ahmedabad. By deducing thus, the learned Judge of the trial Court has convicted the appellant under Section 235(2) of the Cr.P.C. for the offence punishable under Section 22 of the N.D.P.S. Act for contravention of Section 8 of the N.D.P.S. Act. Thereafter, the learned Judge of the trial Court after hearing appellant on the point of sentence passed an order inflicting sentences as referred to in para-1 hereinabove.

6. Being aggrieved against and dissatisfied with the aforesaid judgment of conviction and sentence, the appellant has preferred this present Appeal.

7. We have heard Mr.U.S. Brahmbhatt, learned advocate for the appellant and Mr.H.L.Jani, learned APP for the respondent - State in detail at length. Mr.U.S. Brahmbhatt, learned advocate for the appellant has taken us through the entire evidence on record, oral as well as documentary. He has also taken us through the impugned judgment, which is challenged in this Appeal.

8. Mr.U.S.Brahmbhatt, learned advocate for the appellant has argued that the learned Judge of the trial Court has not correctly appreciated the evidence in its proper perspective and that the learned Judge of the trial Court has not taken into consideration the different breaches of mandatory provisions of the N.D.P.S. Act, committed by Shri Gohil, while conducting the raid and search of the appellant. He has argued that Shri Gohil has contravened the mandatory provisions of Sections 42, 50, 52 and 55 of the N.D.P.S. Act and Section 102(3) of the Cr.P.C. He has further argued that the learned Judge of the trial Court ought to have come to the conclusion that the prosecution has totally failed to prove the case against the appellant for which the charge was framed. He has further argued that in this case, the raiding officer, who seized the muddamal article from the appellant for the purpose of analysis, had sent it to F.S.L. after 4 days and the prosecution has not explained this inordinate delay of 4 days occasioned for sending the sample to the F.S.L. He has further argued that this delay of 4 days in sending the sample to the F.S.L. itself and absence of explanation for causing this delay have prejudiced the defence of the appellant and, therefore, the appellant should be given benefit of doubt. He has further argued that in view of his submissions, this appeal deserves to be allowed and the appellant be acquitted of the charge for which he was tried by the learned Judge of the trial Court.

9. Mr.H.L.Jani, learned APP for the respondent State has supported the impugned judgment. He has argued that this is a case in which all the mandatory provisions of N.D.P.S. Act were complied with by the raiding officer and in no case, it can be said that the raiding officer committed a breach of mandatory provisions of the N.D.P.S. Act. He has further argued that it is wrong to argue that the muddamal articles were sent to F.S.L. 4 days after the seizure. He has argued that looking to the evidence on record, there was a delay of only two

days and prosecution has explained the delay saying that there was some administrative reasons for sending the muddamal articles two days after the seizure. He has further argued that there is nothing on record to indicate that the learned Judge of the trial court committed a serious error in convicting and sentencing the appellant and, therefore, this present appeal deserves to be dismissed.

10. We have anxiously considered the submissions made the by both the parties of the case. We have carefully examined the evidence on record and reappreciated it as if this Court is a trial Court.

11. Looking to the provisions of N.D.P.S. Act no person or officer other than "an empowered officer" under Section 41(2) or "authorized officer" under Section 42(1) of the N.D.P.S. Act can take any action or raid or search any person, building, conveyance or enclosed place.

11.1 Herein this case, P.W.6, P.I. Shri Surendrasinh Gambhirsinh Gohil, Ex.16 received an information from P.W.4, P.S.I. Shri Vakahtsinh Devisinh Vanar and on the basis of that information, he proceeded further to carry out the raid and search of the appellant at the place, which was mentioned by Shri Vanar, while giving information. Shri Gohil was a Police Inspector on the relevant date of raid and search. He was a Gazetted Officer. In the case of Abdul Rashid Ibrahim Mansuri Vs. State of Gujarat, reported in AIR 2000 S.C. 821, the Hon'ble Supreme Court has observed in para-13 as follows.

> "For the purposes of this case, PW-2 being a police officer much above the rank of a constable, would be "any such officer" as envisaged in the Section [i.e. Section 42 of the N.D.P.S. Act]."

This case of Abdul Rashid Ibrahim Mansuri [Supra] is arising from a decision rendered by Division Bench of this Court in State of Gujarat Vs. Abdul Rashid Ibrahim Mansuri, reported in 1990 (2), 31(2) GLR 947. In that case before the Division Bench of this Court, the raiding officer was a Police Inspector Shri P.M. Vishen. This Court held that "Police Inspector Shri P.M.Vishen was an empowered officer under Section 41(2) of the N.D.P.S. Act [relevant portion of para-25 on page 964]". The Hon'ble Supreme Court has held in the case of Abdul Rashid Ibrahim Mansuri Vs. State of Gujarat, [Supra] that PW-2 [i.e. Shri P.M. Vishen, Police Inspector]

being a Police Officer, much above the rank of a constable, would be "any such officer" as envisaged in Section 42(1) of the N.D.P.S. Act. In view of this legal position, it is crystal clear that though Shri Gohil was a Police Inspector, he was "any other officer" as envisaged under Section 42(1) of the N.D.P.S. Act.

11.2 As per an evidence of P.W.6, Shri Gohil, on 14.6.1996 he was on duty as Police Inspector in D.C.B. Police Station and on that day at about 12.45 hours, he received an information from P.S.I. Shri Vanar. As per his evidence, he immediately reduced that information into writing by making an Entry No.10 in the Station Diary at about 12.45 hours. This Entry No.10 is at Ex.19. This fact with regard to making of an Entry No.10 [Ex.19] is reflected in the complaint at Ex.17. Thus, Shri Gohil, who was an authorized officer under Section 42(1) of the N.D.P.S. Act, complied with the requirement of reducing an information into writing. Shri Gohil has further deposed that on receipt of an information, he by sending a written report, informed the Deputy Commissioner of Police of Crime Branch. That report is on record at Ex.22. Thus, Shri Gohil has complied with the requirement of Sub-Section (2) of Section 42 of the Act. The raid was carried out during the period from 13.45 hours onwards. The Panchnama with regard to raid and search of the appellant carried out by Shri Gohil in presence of panch witnesses was completed at about 19.00 hours and, therefore, question does not arise for making compliance of requirement of proviso to Sub-Section (1) of Section 42 of the N.D.P.S. Act.

12. From the record, it appears that on receipt of information from Shri Vanar, Shri Gohil called two independent persons to act as panch witnesses, in his office. He also called the Police personnel including P.S.I. Shri Vanar, who were taken with him at the place as stated in the information. As per the case of the prosecution, the panch witnesses, who first came to D.C.B. Police Station, were allowed to take search of Police personnel and accordingly, search of Police personnel and panch witnesses interse was taken and nothing was found from any one of them. For procedure followed before leaving Police Station, a preliminary panchnama was drawn in presence of panch witnesses during the period from 13.15 hours to 13.30 hours. This panchnama Ex.9 is duly proved by the prosecution. As per the evidence on record, the members of the raiding party including P.S.I. Shri Vanar and two panch witnesses in the leadership of P.I. Shri Gohil went to the place indicated in the information given by Shri Vanar by

vehicle and as per the evidence at about 13.45 hours, the members of the raiding party, P.S.I. Shri Vanar, P.I. Shri Gohil and two panch witnesses took their respective positions nearby the place indicated in the information in such a way that no can doubt for their presence. As per an evidence of the prosecution, the person, who was to come with contraband article from the side of Geeta Mandir S.T. Stand, came there and he was apprehended by Shri Gohil in presence of panch witnesses. P.S.I. Shri Vanar identified that person to be a person for whom an information was given to P.I. Shri Gohil. Shri Gohil informed the appellant that he wanted to take search of his "person", as they have received an information that he was having with him possession of contraband article. Shri Gohil has specifically deposed in his evidence that he informed the appellant that he [P.I. Shri Gohil] was a Gazetted Officer. He showed his Identity Card to the appellant. He has further deposed that he asked the appellant as to whether he wanted himself to be searched in presence of Gazetted Officer or Magistrate and, in reply to it, the appellant said "No". This fact is reflected in the panchnama, Ex.9 which was drawn then and there. This fact is also reflected in his complaint at Ex.17. Thus, the requirement of Section 50 of the N.D.P.S. Act was duly complied with. It may be noted that Mr.U.S.Bhrahmbhatt, learned advocate for the appellant has argued nothing on the point of compliance of Section 42 and Section 50 of the N.D.P.S. Act. Still however, for our satisfaction, we have examined and reappreciated the evidence on record and we are satisfied that Shri Gohil has complied with the mandatory provisions of Section 42 and Section 50 of the N.D.P.S. Act. Section 52 of the N.D.P.S. Act requires that any officer arresting a person under Section 41, Section 42, Section 43 and Section 44 shall have to inform the person of the grounds for his arrest. The prosecution has produced a written information at Ex.25 given to the appellant. This written information Ex.25 contains the grounds of arrest of the appellant. Custody of appellant and muddamal article were handed over to P.S.O. of D.C.B. Police Station at 20.20 hours on 14.6.1996. The appellant was produced before Principal Judge of City Sessions Court at 8.00 A.M. on 15.6.1996. Hence, Section 52 of the N.D.P.S. Act is duly complied with.

13. As P.S.I. Shri Gohil was a main Officer Incharge of D.C.B. Police Station, he affixed the seal of "Police Inspector, D.C.B. Police Station, Ahmedabad City". After recovery and seizure of that muddamal article, Shri Gohil handed over that muddamal article to P.S.O. of D.C.B. Police Station, Ahmedabad City along with the

custody of the appellant and, therefore, second seal of P.S.O. is not required because Shri Gohil himself was an Officer Incharge of the Police Station and, therefore, question does not arise for making compliance of Section 55. Section 102(3) of the Cr.P.C. requires that every Police Officer, who is taking an action of seizure of any property, shall forthwith report the seizure to the Magistrate having jurisdiction. Here in this case, for making compliance of Section 102(3) of the Cr.P.C., Shri Gohil made report [Ex.18] to the Superintendent of Court of City and Sessions Judge, Ahmedabad. From record it appears that while submitting a report seeking police remand to Metropolitan Magistrate, Court No.11, Ahmedabad City on 15.6.1996, Shri Gohil has made full compliance of Section 102(3) of the Cr.P.C. in his said report. Hence, the provision of Section 102(3) of the Cr.P.C. is also complied with.

14. Mr.U.S.Bhrahmbhatt, learned advocate for the appellant has vehemently argued that as per the case of the prosecution, the muddamal articles were seized on 14.6.1996. As per receipt Ex.6 of the Assistant Officer, F.S.L., the muddamal articles were sent to the F.S.L. on 17.6.1996 and, therefore, there is a delay of 4 days. The panchnama with regard to raid and search and seizure of muddamal articles was completed at 19.00 hours. Thereafter, P.I. Shri Gohil went to D.C.B. Police Station and handed over the muddamal articles to D.C.B. Police Station. He lodged a complaint in the Police Station, which came to be registered as C.R.No.Prohi.20/96 at 20.05 hours vide Entry No.15 [Ex.20]. Thus, naturally, when complaint was lodged at about 20.05 hours, it was not possible for him to send that muddamal article on that very day. The prosecution has examined P.W.2, Gokalbhai Ramabhai, [Ex.10] who was performing his duty as Crime Writer Head in D.C.B. Police Station has deposed that he received muddamal articles at about 7.00 P.M. [i.e. 19.00 hours]. Thereafter, immediately he made an Entry No.23 on Page-168 of the muddamal Register. That Entry No.23 is produced at Ex.11. He has further deposed that on 17.6.1996, he handed over that muddamal articles to P.W.3, Sagarbhai Haribhai Rabari, for carrying that muddamal articles to F.S.L. and to hand over the same to the F.S.L. The prosecution has examined P.W.3 Sagarbhai Haribhai Rabari, at Ex.12. He was one of the members of the raiding party. He has deposed that on 17.6.1996 at about 11.30 A.M., he received the muddamal articles from Crime Writer Head and, thereafter, he handed over that muddamal articles to the F.S.L. He was given a receipt by responsible Officer of F.S.L. That receipt is

produced at Ex.6. The report of F.S.L. is Ex.7. If we read that report of F.S.L., we find that the muddamal articles packed in card board box, was received in packed and sealed condition with seal of Police Inspector, D.C.B., Ahmedabad City and, therefore, the chain of transit of muddamal articles from Crime Writer Head Constable to F.S.L. is completely proved and, there is nothing on record to indicate that the muddamal articles packed and sealed in card board box was tempered with at any point of time during its transit. The Scientific Officer of F.S.L., has nowhere stated in his report that the muddamal articles were not in fit condition for analysis. P.W.2, Gokalbhai Ramabhai [Ex.10], who received muddamal articles from Shri Gohil had kept that muddamal articles with him in his official capacity as Crime Writer Head in a safe cupboard and on 17.6.1996, he handed over that muddamal articles to P.W.3 Police Constable Sagarbhai Haribhai Rabari, [Ex.12] to carry that muddamal articles and hand over the same to F.S.L. This witness Gokalbhai Ramabhai is not asked any question by defence lawyer as to why there was a delay of two days because first date and the last date on which the muddamal articles were received by F.S.L. are not to be counted and, therefore, the delay is of only two days namely 15.6.1996 and 16.6.1996. When no question was asked by the learned advocate, who appeared for the appellant during the trial for this delay of two days, delay is not required to be explained. Now the appellant cannot take a contention that the prosecution has not explained the delay of two days. For a moment if it is believed that the prosecution has not explained such delay of two days, then in that case, the accused has to satisfy this Court as to in what manner and how the defence of the appellant has been prejudiced because of this, delay of two days. The Central Government has made the N.D.P.S. Rules, 1985. There is no specific provision with regard to sending of muddamal articles to F.S.L. within a stipulated time. Sub-Section (4) of Section 52 of the N.D.P.S. Act expects that P.S.O. of concerned Police Station, with all convenient despatch take such measure as may be necessary for the disposal according to law of article. No time limit is prescribed for sending muddamal article to F.S.L. In view of this , when there is no statutory requirement of sending the muddamal articles to F.S.L. within a stipulated particular time, the accused must satisfy the Court that his defence has been prejudiced for delay occasioned in sending the muddamal articles to F.S.L. Here in this case, the delay is of only two days. The concerned Officer of F.S.L. has stated that seals of the sample were found intact and, therefore, question does not arise

for consideration of a contention with regard to tempering of the muddamal articles. He has also not stated that the sample was unfit for analysis. Under the circumstances, this contention taken by Mr.Bhrahmbhatt is devoid of merits and it is rejected.

15. Mr.Bhrahmbhatt has further argued that the documents Ex.23, 24 and 25 produced by the prosecution during the course of trial were not produced along with the charge-sheet and, therefore, the accused was not aware of contents of these documents. Ex.23 is a copy of letter of Shri S.G.Gohil dated 14.6.1996 addressed to the Director of F.S.L. requesting him to depute some Scientific Officer at the place of raid so as to ascertain prima facie whether article found from the accused was a contraband article prohibited under the N.D.P.S. Act. On the basis of this letter [Ex.23], as deposed to by Shri Vanar, Shri Ranpura, Officer of F.S.L. had come at the place of raid and he examined the article on the spot and informed that the said article prima facie appears to be a "Charas". Inspite of this, in a regular course in a routine manner the muddamal article was sent under forwarding letter, Ex.5 to the F.S.L. and on regular examination of the article, the responsible officer of F.S.L. issued a final report Ex.7 and, therefore, this letter Ex.23 is of a little significance. Ex.24 is a copy of receipt issued by Shri Gohil to accused for having recovered and seized the muddamal article from him. It bears the signature of accused. Original copy was given to the accused and, therefore, the copy of Ex.24 was not required to be sent along with the charge-sheet Ex.25 is a report stating interalia the grounds of arrest given to the accused. It also bears a signature of the accused. Therefore, merely because copies of three documents viz Ex.23, 24 and 25 were not submitted along with the charge-sheet, defence of accused cannot be said to have been prejudiced. It is not a case of the accused that when this documents were tendered in the evidence, copies of the same were not given to him during trial. When documents were tendered in the evidence during the trial, he could have well objected for these documents being produced at a later stage. No such objection appears to have been taken by the accused and, therefore, this last contention is also without substance and accordingly, it is rejected.

15. Except the aforesaid contentions, no other contentions are taken by Mr.U.S.Bhrahmbhatt, learned advocate for the appellant before us. No authority is cited by him in support of his submissions. We have minutely and carefully examined and reappreciated the

evidence. We do not find any substance or material to come to a conclusion that the judgment of the conviction and sentence is wrong and erroneous. We are in complete agreement with the reasons stated by the learned Judge of the trial Court. In view of this, the impugned judgment convicting the accused is correct, legal and proper. It does not require to be interfered with by this Court.

16. Here is this case, the learned Judge of the trial Court has convicted the accused for an offence punishable under Section 22 of the N.D.P.S. Act for contravention of Section 8 of the N.D.P.S. Act. Section 8 of the N.D.P.S. Act reads as follows.

"8. Prohibition of certain operations. - No person shall -

(a) cultivate any coca plant or gather any portion of coca plant;

or

(b) cultivate the opium poppy or any cannabis plant ; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, be notification in the Official Gazette, specify in this behalf."

"In view of the aforesaid text of Section 8, it prohibits a person from producing, manufacturing,

possessing, selling, purchasing, transporting, warehousing using, consuming, importing inter-state exporting, interstate importing into India, exporting from India or transhipping any narcotic drug or psychotropic substance."

In view of Section 2(iii)(a) of the N.D.P.S. Act, a cannabis (hemp) means "Charas". The narcotic drug is defined in Section 2(xiv) of the N.D.P.S. Act. As per this definition, Charas is a narcotic drug. Section 2(xxiii) of the N.D.P.S. Act defines "Psychotropic Substance". Psychotropic Substance means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule. Immediately below the end of Section 83, a schedule has been given. This schedule is a list of psychotropic substances. It we peruse this list of psychotropic substances, we find that cannabis (hemp) is not shown as a psychotropic substance. As discussed earlier, charas is a narcotic drug within a meaning of Section 2(iii)(a) of the N.D.P.S. Act. Section 8 of the N.D.P.S. Act prohibits a person from possessing both Narcotic Drug and Psychotropic Substance. Section 20(b) of the N.D.P.S. Act is a punishing section for contravention of Section 8 of the N.D.P.S. Act, if the person is found with possession of cannabis. Section 22 of the N.D.P.S. Act is a punishing section for contravention of Section 8 in relation to the psychotropic substance. When charas, which was found from the accused is a narcotic drug, the accused cannot be convicted under Section 22 of the N.D.P.S. Act. Here in this case, the learned Judge of the trial Court has convicted the accused under Section 22 of the N.D.P.S. Act for contravention Section 8 of the N.D.P.S. Act.

In view of the discussion made hereinabove, the learned Judge of the trial Court has applied an incorrect section for convicting the accused. When the case against the accused is proved that he was found with possession of charas, then certainly, contravention of Section 8 in relation to charas is punishable under Section 20(b)(ii) of the N.D.P.S. Act. The learned Judge of the trial Court has framed charge for the offence punishable under Section 22 of the N.D.P.S. Act for contravention of Section 8 of the N.D.P.S. Act. At the end of trial, he has convicted the accused for the said offence. This is nothing but a mere error of stating Section 22 instead of Section 20(b)(ii) of the N.D.P.S. Act. It seems that this error is a typographical error. In no case, it can be said that

because of mentioning of Section 22 of the N.D.P.S. Act instead of Section 20 there is a failure of justice. We are of the view that it is merely an error of stating section in order of conviction by which accused is convicted. Looking to the charge Ex.1, it is crystal clear that the accused knew very well that he is being tried for keeping a possession of charas weighing about 1135 grams. When charas i.e. cannabis (hemp) is a narcotic drug, the correct section for punishing the accused is Section 20(b)(ii) of the N.D.P.S. Act and, therefore, the judgment of conviction and sentence is required to be confirmed with a little modification in punishing section of the N.D.P.S. Act. In view of this, the judgment of conviction and sentence by which the accused has been convicted and sentenced for committing an offence punishable under Section 20(b)(ii) of the N.D.P.S. Act for contravention of Section 8 of the N.D.P.S. Act. Except this little change in stating section, rest of the entire judgment is hereby confirmed.

17. For the foregoing reasons, this appeal deserves to be dismissed and accordingly, it is dismissed. The muddamal articles to be disposed of in accordance with the operative part of the judgment of the trial Court.

[M. H. KADRI,J.]

[H. H. MEHTA,J.]

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